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NEW YORK CITY
CHARTER REVISION COMMISSION

126 Stuyvesant Place
Staten Island, New York

March 30, 2005
6:00 p.m.

A PUBLIC HEARING at the above-
mentioned time and place, before Christine
Shearer, a Stenographer and Notary Public
within and for the State of New York.

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HEARING

P R E S E N T:

- Dr. Ester R. Fuchs, (Chair)
- Dr. Dall Forsythe (Vice Chair)
- Stephen J. Fiala (Secretary)
- Robert Abrams, Esq.
- Curtis L. Archer
- Dr. Lilliam Barrios-Paoli
- Amalia Victoria Betanzos
- David Chen
- Anthony Crowell, Esq.
- Dr. Mary McCormick
- Stephanie Palmer
- Jennifer J. Raab

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HEARING

DR. FUCHS: I would like to call this meeting for the New York City charter revision commission to order. Good evening, everyone and welcome to the fourth public hearing for the New York City Charter Revision Commission.

My name is Ester Fuchs and I chair the commission and I would like before I introduce us to the other members of the commission I would like to thank our Commissioner Steve Fiala who graciously provided us the space in Richmond County to hold our hearing today.

As you know Steve is a native of Staten Island and in his commission and we are very pleased to be here today. I think the food is improving at every public hearing and so far it looks like Staten Island is winning hands down, but I should not say that.

Let me introduce you to the

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2 other members of the Charter revision
3 Commission. Steve Fiala is the
4 secretary of the commission and as you
5 know he is the county clerk and
6 commissioner for the jurors of
7 Richmond for us who grew up in the
8 other boroughs are Staten Island. He
9 was also a member of the New York City
10 council and he is a county resident.

11 To my left is Doctor Dall
12 Forsythe, he is vice chair of the
13 commission. He is the chief
14 administrative officer of the
15 Episcopal Diocese of New York and
16 former budget director of New York
17 State and the New York City Board of
18 Education.

19 I will jump over here and in
20 alphabetical order here is Bob
21 Abrams. He is currently a partner of
22 the law firm of Strock & Strock &
23 Lavan and he was of course the New
24 York State Attorney General and he
25 served as borough principal of the

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2 Bronx and was a member of the New York
3 State assembly. And we are
4 particularly pleased that we got him
5 to come back into the public service
6 as a member of the charter revision
7 commission. I think in terms of
8 everybody's years of public service
9 Bob really winds that race hands down
10 and it is really a pleasure to have
11 you with us on this commission.

12 Down at the end is Curtis
13 Archer, who is Executive Director of
14 the Rockaway Development and
15 Revitalization Corporation and is the
16 former director of Small Business
17 Development for the upper Manhattan
18 Empowerment Zone. Everybody does have
19 a story and I tend to want to tell
20 those stories, but I am controlling
21 myself because I know we started
22 late. Curtis also is a wonderful
23 public servant and we are pleased to
24 have him here.

25 Amalia Victoria Betanzos, and I

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will mention you by your complete name
this evening. She is a resident of
Staten Island also, the president of
the Wildcat Service Corporation a
nonprofit employment program that is I
believe the best in the country and a
national model in which they come from
literally all around the world to
emulate what she has done in the field
of work force development. She was
formally a commissioner of the
Department of Youth Services and
Executive secretary to Mayor John
Lindsay and served on the I can't
really count the number, but we think
four previous revision commissions, so
she keeps us on by making sure we do
everything right.

David Chen is the executive
director of the Chinese American
planning Council and is the founding
chairman of the Board of Directors of
the Chung Pak Local Development
Corporation and he brings his special

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expertise as a chair of the development corporation to the issues of the Charter Revision commission.

Anthony Crowell is special counsel to the Mayor and former executive director and general counsel to several previous Charter Revision commissions. He is also an adjunct professor at Brooklyn and New York law schools and we were fortunate to have him as a member of the Charter Revision Commission, not simply as a staff as he served in the past and his expertise has been invaluable to this commission.

Doctor Mary McCormick is president of the Fund for the City of New York. She is a former special assistant to New York City deputy Mayor for labor relations and personnel and a professional at Columbia University. She has been somebody also who has served as government and has committed her life

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2 to public service and she is one of
3 those people who you probably don't
4 know, but have had known that much of
5 the innovation that happens in city
6 government is the result of work that
7 Mary did with the Fund for the City of
8 New York and I had the personal
9 pleasure of working with her in
10 annotative projects in the past two
11 years for the Mayor and she is one of
12 those one of a kind New Yorkers, who
13 again the rest of the country and even
14 the Japanese have come to visit Mary
15 to found out how she does that. I
16 figure that is always something that
17 nobody could compete with.

18 Stephanie Palmer is the
19 Executive Director of the New York
20 City Mission Society and is the former
21 Executive Director of the Human
22 Services Council of New York City. She
23 has a special expertise of working
24 with youth in the city and also
25 working in community-based

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organizations settings in several boroughs in New York and I think that this is a Charter Revision commission in which we both have experts from the business community from the government sector that we as had community based organizations and that held to keep your focus at the community level too and that is both from a city wide perspective as well from the perspective of individuals in neighborhoods.

And Jennifer Raab is the president of Hunter College and she is the former chair of the New York City Landmarks Preservation Commission and we are very fortunate to have her as well as a commissioner. She has expertise both in her former position in landmarks preservation and also in her role now as president of the flagship institutions of CUNY if not the flagship of institution than she has the leader both in public

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education in preservation and also has really given to the public sector much more than any of us have a right to expect.

Today not attending is Stanley E. Grayson, Lillliam Barrios-Paoli, I think we have an extremely dedicated commission that is dedicated to doing work this year on Charter issues and we are pleased to here in the borough of Staten Island.

Let me explain the process of the public hearing for those of you who are here tonight and give you a little public information of what we will be doing in the next couple of months.

We have on April 4th, a public hearing and a forum which will be on operational efficiency and an expert forum which will take place at Hunter College in Manhattan and it will begin at 4:00 p.m., and the public hearing part will begin be at 6:00 P.M..

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2 We also have a web site if you
3 need any information charter
4 commission www.NYC.GOV/Charter and you
5 could pretty much find all the
6 information as well as the transcripts
7 from our hearings on the web site.
8 You could also call 212-676-2060 if
9 you would like a person to talk to
10 about information that you might
11 need.

12 We would also a have copy here
13 today and one of our executive
14 assistants could provide you with the
15 first report summary of issues which
16 is the consideration for charter
17 revision. You could get a hard copy
18 here or you could download it from the
19 web site or you could get it by
20 calling New York and we are covering
21 every way of technology in
22 communicating and whatever makes you
23 comfortable we hope we can offer it to
24 you.

25 This public hearing allows the

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public to testify before the members of the commission on any type related to the New York City Charter. I know there are many topics of interest to people and obviously you could say what you wish for the purposes of this commission's hearing it is best to try to stay focused for this commission because that is all we are mandated to effect in our position.

We had a sign-up sheet in the back of the room and if you wanted to testify today please sign up on that sheet and if you haven't done that yet could you give your name to Brian. People will essentially testify in the order they had signed up. All though for public officials we do try to move them to the front of the list when they show up. Each person wishing to testify has the opportunity to speak for three minutes and hence can submit the written testimony if they wish.

We have somebody keeping time

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and a bell will go off when you have 30 seconds left. When you finish your oral testimony though please stay so the commission could address some questions to you.

I would like to thank everybody for coming this evening and we will begin the hearing now. I would like to call on John Zaccone who is the counsel to the Staten Island borough president who will be here testifying for the borough president.

MR. ZACCONE: Good evening. Madam Chair and commissioners, as stated my name is John Zaccone. I am counsel to the borough president James Molinaro.

The borough and the people of Staten Island are afforded a unique position in the City of New York. If Manhattan is the borough of finance and Kings is the borough of churches then Staten Island is the borough of open lands and spaces.

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Some of these open lands are however in jeopardy. The protection and preservation of open space, the safeguarding of significant natural areas and the historic places and the preservation of parks and recreational opportunities collectively refer as the community character are public purposes that greatly concern the people of the borough of Staten Island and indeed the citizens of New York City.

It is for that reason that Borough President James P Molinaro, the governor, the Mayor and members of the city council from Staten Island have made a substantial commitment of time, effort and public funds to these public purposes. In recent years millions of dollars have been designated to preserve public park lands and open spaces in Staten Island.

Despite all of these efforts,

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unique open spaces in Staten Island many of which are owned by the not-for-profit corporations are under currently extreme developments pressure with open spaces and underdeveloped or underdeveloped lands being converted to other uses at an alarming pace. Recently several large tracts of land, previously owned by not-for-profits have been sold to developers and may other such large parcels are at risk. Goodhue Center, for example, is presently considering the sale of some or all of its valuable open space lands for development.

Even with our best efforts the rate of development is still out pacing conservation efforts. If not addressed, the unique of Staten Island's open spaces could be lose forever. Not only would these valuable resources be jeopardized, but the substantial investment made in

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protecting community character on Staten Island and throughout the city would also be in jeopardy.

Unfortunately the existing traditional means of preserving these unique open spaces will not be sufficient to protect in the fundamental community character of Staten Island. Therefore, the borough president of Staten Island asks that the Charter for the City of New York be revised to include a new Chapter 75 establishing borough community preservation commissions for each of the five boroughs of the City of New York.

It is proposed that a commission shall represent each individual borough and each commission should be made up of members to be appointed as follows: Three by the Mayor, two by the borough president and one by each member of the City Council representing citizens of that

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2 borough.

3 The Mayor shall appoint the
4 chairperson from any of the members of
5 the commission. The members of the
6 commission for each borough shall
7 serve at the pleasure of the
8 individual appointing such member. The
9 members shall serve without
10 compensation and but shall be
11 reimbursed for actual and necessary
12 expenses incurred in the performance
13 of their duties.

14 The purpose of the borough
15 commission shall be to examine open
16 space lands undeveloped lands and
17 under developed land throughout the
18 borough they are appointed to serve,
19 with special attention to those open
20 space lands held by not-for-profits.
21 The commission shall then determine
22 the importance in assessing of
23 preserving and maintaining the
24 designated lands, and using such funds
25 as that are made available to them

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2 seek to purchase and preserve those
3 lands.

4 The Staten Island borough
5 president further proposes that these
6 community preservation commissions be
7 funded by an additional real estate
8 transfer fee of 1 and a half percent
9 to be assessed upon the transfer of
10 any real property located in each
11 individual borough like a borough
12 community preservation commission.

13 In addition, the borough
14 preservation commission could get
15 funds from the other sources,
16 including the borough president's
17 capital budget, the designation of
18 funds from state and city agencies,
19 legislators and executives, and
20 contributions and donations from
21 private individuals and companies. Any
22 lands purchased by the borough
23 community preservation commission
24 would be maintained by the community
25 Preservation Commission or transferred

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2 to other city agencies to be
3 maintained for the benefit of the
4 people of the borough and the City of
5 New York.

6 Together with the establishment
7 of the community preservation
8 commission for each borough, the
9 borough president requests that the
10 city charter also be amended to allow
11 the residents of each individual
12 borough to determine by referendum if
13 they wish to impose the additional
14 transfer fee upon real property
15 transfers within that borough for the
16 benefit of the community preservation
17 commission.

18 Along with the proposed
19 charter revisions, the borough
20 president will ask the City Council,
21 the Governor and the New York State
22 Senate and Assembly to pass
23 legislation authorizing the
24 imposition of the proposed transfer
25 fee for any Borough that so chooses in

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2 the referendum.

3 The process of such transfer
4 fees would be collected by the City
5 Register, and in the case of Staten
6 Island, the County Clerk, who shall
7 collect the transfer fee and tender
8 the fees collected in the individual
9 boroughs to the community preservation
10 commission for that particular
11 Borough. The funds collected from
12 this transfer fee shall not be
13 aggregated, retained or disbursed by
14 the collecting agent except to the
15 Borough commission of the transaction -
16 that is the transfer fees for real
17 property in Staten Island shall only
18 go to a Staten Island Community
19 Preservation Commission; the transfer
20 fees for real property located in
21 Queens shall go to a Queens community
22 preservation commission, etc.

23 The borough president would
24 also suggest that the legislation
25 imposing the transfer fee be limited

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2 in duration to twenty years. After
3 the expiration of twenty years, the
4 individual borough community
5 preservation commissions, the city
6 Council and the State Legislature and
7 Governor could re-examine the
8 continuing need for the collection and
9 use of the transfer fees. Any funds
10 remaining on the termination of the
11 transfer fee would then be disbursed
12 to the City's general fund.

13 I respectfully submit that to
14 the Charter Revision Commission.

15 DR. FUCHS: Do we have any
16 questions?

17 DR. FORSYTHE: Do we have
18 copies?

19 MR. ZACCONE: Yes.

20 DR. FORSYTHE: For the first
21 time I am a little confused and it is
22 my first time here, so you will help
23 me.

24 MR. ZACCONE: I will try.

25 DR. FORSYTHE: The taxes, the

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2 real estate transfer tax is that what
3 we are talking about?

4 MR. ZACCONE: Sorry, excuse me
5 one second, the real estate transfer
6 fee.

7 DR. FORSYTHE: How much is that
8 now?

9 MR. ZACCONE: It is an existing
10 one percent for the city on one to two
11 family, one to three family dwellings
12 and then there is an escalating rate
13 depending upon the type of properties
14 and the purchase price.

15 DR. FORSYTHE: For a typical
16 transaction?

17 MR. ZACCONE: For a \$250,000
18 house of one family in nature it would
19 be one percent to the city, four
20 dollars per thousand to the state.

21 DR. FORSYTHE: So that is 1.4
22 percent; is that right?

23 MR. ZACCONE: That is correct.

24 DR. FORSYTHE: I would add that
25 is double that?

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MR. ZACCONE: In effect, yes.

DR. FORSYTHE: And that is if I get my calculator we can work this out on a 250,000 transaction.

MR. ZACCONE: That would be an additional 303,000.

DR. FORSYTHE: Paid by whom?

MR. ZACCONE: It would be up to the legislature to determine who would propose that and that would be paid by the purchaser in this matter.

DR. FORSYTHE: But presumably the incidence, if I remember and if my economics is correct is by the seller, I think.

MR. ZACCONE: In theory, yes but again it would be incorporated in the transaction themselves.

DR. FORSYTHE: So, the role of the city Council the Charter imposing the tax would be. I used to work in the state government and I thought these were state taxes.

MR. ZACCONE: They are state

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amended taxes that would have to be passed by the legislature and signed by the governor, but they would also require a promo message in our belief from the city council.

DR. FORSYTHE: You would expect then to have individual promo messages from each borough in theory, is that how it would be done?

MR. ZACCONE: If each borough wishes to incorporate and establish the borough preservation commission they could do it all at once or not.

DR. FORSYTHE: This would be following a referendum by the voters of Staten Island to impose the tax in the first place. referendum

MR. ZACCONE: That is correct. Commissioner if I may, this is modeled on a community preservation commission on a fund that is established in Paconic at the end of Long Island. It is five towns in Paconic that have a similar structure and they take a two

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percent transfer fee and use that to preserve open space on under develop land and water shed.

DR. FORSYTHE: This may impose the tax to the referendum.

MR. ZACCONE: That is correct, the state in looking to impose the tax required a mandatory referendum of each town.

DR. FORSYTHE: Some of this presumably would go to the maintenance and operations of the commission and then for other purposes --

MR. ZACCONE: Our intent is that the majority of it almost goes to capital purposes. It would be to purchase lands. The commission would meet and would make the determinations. We would imagine that some of them would have to require expertise people to come in and do appraisals evaluations to represent the commission. Other than that we expect that almost entirely the budget

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would go toward the purchase of lands.

DR. FORSYTHE: The lands would be for, would be bought for tax purposes presumably once they were purchased?

MR. ZACCONE: For not-for-profit.

DR. FORSYTHE: But unless they were purchases by the commission?

MR. ZACCONE: Yes, it would be maintained off the tax laws. It is for the not-for-profit is maintained.

DR. FORSYTHE: It is an interesting proposal unless more specific than what we have heard today. I think there are other commissioners who have questions.

DR. FUCHS: Doctor McCormick.

DR. MCCORMICK: Is this tax that was placed in last year what would have yielded it in Staten Island?

MR. ZACCONE: We have no definitive numbers on that. I believe

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maybe Commissioner Fiala would be able to give some assistance. We didn't finalize the numbers, but could give you an example.

The largest real estate transaction that took place the past year was the purchase of land for a NASCAR track, a proposed NASCAR track that would have generated a million and a half dollars under this proposal to be reserved to use public lands.

DR. MCCORMICK: What percentage of Staten Island land would you say that would qualify for this are at risk for over developed?

MR. ZACCONE: To be honest with you commissioner, any number I make to you would be speculation. You would have to take sometime and effort to determine which lands are at risk and that would be the way to look toward that to see first which lands are at risk which are going to become open in the public market and then make a

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2 determination there.

3 DR. MCCORMICK: Have you talked
4 about this idea with colleagues in
5 other boroughs?

6 MR. ZACCONE: No, commissioner,
7 I just spoke recently with the
8 colleagues on Staten Island to make
9 the determination, but it is our
10 proposal that any borough would use
11 the same avenue to protect their
12 public lands and spaces everything in
13 open parks in Queens to pocket parks
14 and community gardens in Manhattan and
15 Brooklyn and the Bronx.

16 DR. MCCORMICK: Thank you.

17 DR. FUCHS: Commissioner Archer
18 and Commissioner Chen.

19 MR. ARCHER: I have a quick
20 question. I work for the economic
21 being development corporation. And I
22 remember trying to do development
23 projects out on Staten Island. There
24 were a number of lands that were title
25 wetlands that you can't develop on,

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are you talking about different lands?

MR. ZACCONE: We are talking about other open space lands that what brought this to mind is recently we had large tracks of land that were owned by not-for-profit agencies that kind of up on the market. They were purchased by private builders and they are undergoing development in the near future. We would like this mechanism to act as one commission to either have funds available through the transfer fee or through other funding mechanisms either through the capital budget project and it would be a store house to use that and have available to purchase these lands when they come on the market.

We are not talking about any eminent domain rights or powers. We are talking about making market purchases.

DR. FUCHS: Commissioner Chen.

MR. CHEN: I would like to

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explore the area to generate money for open spaces, but given the rate for the development of rate at 5 million a year how many years do you need to accumulate enough money for a substantial purchase?

MR. ZACCONE: For example, I know other properties that have gone on for sale that could have been used for this. There are a large undeveloped lands right now in looking at that and looking at the transfer rates it could be easily millions of dollars of a year to go out and maintain these lands.

MR. CHEN: What would be the primary or the actual rate to --

MR. ZACCONE: They are truly high and for example, as I spoke earlier there is large tracks of lands on the South Shore of Staten Island that were held by large not-for-profits that are now gone out I believe 14, 15 million dollars

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transfers that we would need to try to protect these things and purchase them at market rate and we would need the funds available for that.

So our concern is why we propose a sunset after 20 years or after ten years the legislature would sell a lap on the taxes then they could examine the need if there is no need retire it.

DR. FUCHS: Commissioner Betanzos.

MS. BETANZOS: I really don't understand all this.

MR. ZACCONE: Okay, please speak up.

MS. BETANZOS: I really do need some help in understanding this.

MR. ZACCONE: Certainly.

MS. BETANZOS: Let's say the lady across the street from me who has a house that she bought for \$50,000 35 years ago and now she is going to be selling that house for \$600,000.

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2 There is the only equity that they
3 really have, that is not too far from
4 the average house on Staten Island.
5 This is the only equity that they have
6 and they are thinking of funding their
7 retirement with this money and move
8 into a condo or a retirement community
9 and having the rest of the money to
10 live on. You are saying that you are
11 going to be imposing a tax on this
12 sale.

13 MR. ZACCONE: A real estate
14 transfer fee, yes.

15 MS. BETANZOS: How much would
16 it be on a \$600,000 house?

17 MR. ZACCONE: On a \$600,000
18 house it would be \$9,000.

19 MS. BETANZOS: Do you think
20 that is really fair to this person who
21 has nothing to do with the large
22 tracks that you want to acquire, but
23 it has a lot to do with every single
24 tax dollar that is going to be
25 charged?

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I wonder if you thought carefully about what is going to happen to the average person on Staten Island when they sell their house the only real equity they have you are going to slice away a good part of that.

MR. ZACCONE: Ms. commissioner it is our proposal and it is what I stated earlier that before any tax be imposed the people of Staten Island have rights to be imposed upon them., I am calling it a real estate transfer fee.

MS. BETANZOS: You call it any way you want to call it. That is the average home owner who has to sell their house and look at their house as their only real equity they have is going to have to pay an average of \$9,000 that they didn't expect to pay for something that really could probably be invested 100 different ways.

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MR. ZACCONE: Well, commissioner it is our stated opinion that it could not be addressed in a 100 different ways, the ways that are there now there are seeing these valuable lands slip through.

We are suggesting, what we have proposed here and again if it doesn't come directly before the review commission, in regard to the tax, the tax or the transfer fee would be imposed upon the purchaser to pay for it; two, no transfer fee would be imposed without a referendum vote from the majority of the people of Staten Island determining if they wish this or not, if they don't wish it then there is none.

MS. BETANZOS: I have two things. You are absolutely right. This should not be brought in front of the charter commission. It is not something that we really can deal with and number two that it is going to set

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up a war on Staten Island once it is explained the average home owner who is up in age and people I am now at this age, I worry about my people and I deal with the people up there in age and who would feel it is a really discriminatory against them and it is absolutely wrong.

MR. ZACCONE: Respectfully Commissioner, if there is a referendum that is the people of Staten Island actually determine it, it is for them to say.

Second, it is something that I must bring before the charter review commission. I am asking that an additional Chapter 75 be added to the New York City Charter allowing for the creation of borough community preservation commissions. There is no other place of this to bring that out but here.

MS. BETANZOS: I would think it would be done in other ways.

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MR. ZACCONE: We are certain open to suggestions or other options that you could present to the borough president.

MS. BETANZOS: I would be glad to do so, but in addition to that the really think that the issue that you really are going to be treating this whole referendum you would be denying the community completely and people who need every cent that they are going to get from that equity in their houses will lose. And that is absolutely wrong.

Thank you.

MR. ZACCONE: Thank you.

DR. FUCHS: Commissioner Abrams.

MR. ABRAMS: I believe you indicated in your testimony that the borough president's office has consulted with other elected officials on Staten Island.

MR. ZACCONE: I could not say

1 HEARING

2 that first hand commissioner, I could
3 say that I heard from other sources
4 that they have.

5 MR. ABRAMS: Could you share
6 with this commission what the
7 responses have been by members of the
8 state Senate and the state Assembly
9 and the city council from Staten
10 Island?

11 MR. ZACCONE: Respectfully, I
12 think they are better served to tell
13 you what their position is than I. I
14 don't want to paraphrase or put words
15 in someone else's mouth.

16 MR. ABRAMS: You indicated to
17 us that borough president before
18 publicly announced this has
19 consulted with the Staten Island
20 elected officials. Can you tell us
21 generically if there is support by the
22 local elected officials for the
23 proposal?

24 MR. ZACCONE: Respectfully
25 commissioner, I did not speak to them

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personally, so I am reluctant to make blanket statements regarding individual comments during a conversation that I did not take part in. What I could say that from what I gather it is purely favorable and we need to do more examination on whether we are propose to go today.

Again, what we are proposing the commission to do today is specifically just set up the borough community preservation commissions. I am informing the commission of the second part of this which does not come before the commission itself, but is something that I am sure the commission can understand when it makes its determination.

DR. FUCHS: Mr. Fiala.

MR. FIALA: Thank you to the borough president for being creative. We are a deliberate body here. We would like to go back and debate of these things. This is the first that

1 HEARING

2 I am hearing of it and I just want to
3 throw out some observations maybe you
4 could go back just as we will and
5 deliberate and then maybe consult with
6 us on how to relay any concerns that I
7 may have.

8 MR. ZACCONE: Sure.

9 MR. FIALA: As I understand it
10 each borough will have an opt in or
11 opt out option through a ballot.

12 MR. ZACCONE: That is correct,
13 commissioner. I refer to it as a
14 referendum for the City since it is up
15 to the borough to determine if they
16 want the transfer fee.

17 MR. FIALA: The observation is
18 initially, and just let me say that
19 what we do here is we banter back and
20 forth, these decisions especially one
21 as thoughtful when someone comes up
22 with a serious thoughtful proposal
23 staff and the commission evaluates
24 that and in a thousand different ways
25 and try to make their best judgment

1 HEARING

2 on the merits, but here are some
3 initial thoughts that I have that I am
4 sure others will question as we go
5 about debating this amongst ourselves.

6 The state legislature over the
7 past few years has quadrupled the
8 recording fees associated with
9 property, real property, and New
10 Yorkers have taken a pretty big hit
11 already in this particular area. This
12 tax, this fee is a doubling of the
13 existing fee -- that I might add.

14 The environment is something
15 that we leave to a worlds that we will
16 not see, just as our children are. So
17 it is a noble endeavor here, but there
18 is a reality also about New Yorkers
19 screaming that they are taxed every
20 which way imaginable if it is a tax, a
21 fee, a surcharge.

22 MR. ZACCONE: I understand.

23 MR. FIALA: Part of what we
24 collect here in this building also
25 goes to the MTA. The people say why

1 HEARING

2 do have to pay a tax that goes to the
3 MTA. New Yorkers are heavily taxed.
4 We know that, so given the quadrupling
5 of those associated fees that go along
6 with this and if I may ask the
7 question of my deputy, the fees, the
8 state legislature voted the other day
9 to increase the --

10 MR. MOLINARO: Mortgage
11 recording tax.

12 MR. FIALA: For how much?

13 MR. MOLINARO: They increased a
14 portion of it from .25 percent
15 according to the office.

16 MR. FIALA: The state budget
17 contemplates an additional increase
18 with came on top of the quadrupling of
19 the fees, with the 100,000
20 constituents that I deal with every
21 year and come through here screaming
22 that I am stealing their money. I am
23 wondering if this might be viewed less
24 than favorably notwithstanding the
25 option to opt in.

1 HEARING

2 Here is the other question that
3 I have and I don't want to put you on
4 the spot. It is a rhetorical and then
5 go back convince me at another time, I
6 remain very open to all suggestions,
7 but does not an avenue presently exist
8 for the ends that we are talking
9 about. There is a capital budget. It
10 is never enough but budgeting is
11 really about choices and prioritizing
12 and does not the elected body council
13 members borough presidents, the Mayor
14 have the ability to get together and
15 designate this property or that
16 property as priority one.

17 Therefore, capital dollars
18 would go toward the purchasing of that
19 land. I did that when I was a
20 councilman. It is tough because there
21 are limited dollars, but doesn't a
22 mechanism to achieve the ends that are
23 being submitted here today already
24 exist in the form of the existing
25 capital budget process?

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MR. ZACCONE: Those avenues that are available at present are prudent to be lawfully inadequate and I am sure that the commissioner is aware that we have had camp saint Edwards go up for sale and be lost to us. Now Goodhue Center IM these are locations on Staten Island that were held largely by not-for-profits and were basically considered as community treasures. They are being lost to bulldozers and houses right now.

With the avenues that are available. These properties are being lost to us and we feel and the borough president is very strong behind trying to find a means or an avenue to safeguard these for the future. And yes those avenues do exist and the capital funds from city councilmen, borough presidents, and mayors and their are funds that come from the governor when we ask and he has them available to us.

1 HEARING

2 MR. FIALA: Thank you for the
3 creative proposal.

4 DR. FUCHS: Commissioner Raab.

5 MS. RAAB: To follow up on
6 Commissioner Betanzos point, what is
7 actually the Charter commission's
8 purview over this. Clearly you state
9 the legislature to raise the taxes and
10 need the hole, but I would like to
11 clarify the issue and it is point well
12 taken that a chapter can add a
13 commission. It is not clear to me
14 that this can't be accomplished by
15 legislative means. I think we should
16 have an answer if this is the only way
17 to approach something like this.

18 DR. FUCHS: I will ask
19 Commissioner Crowell to comment on
20 that, please.

21 MR. CROWELL: There is a couple
22 of things that I heard in
23 Mr. Zaccone's testimony that I think
24 may help inform our discussion. First
25 thing the transfer tax actually would

1 HEARING

2 need to be, you would need to have a
3 state law amendment actually and that
4 cannot be achieved by charter
5 revision. That would have to be
6 through the state legislature.

7 Currently the state law
8 governing transfer taxes sets a
9 maximum rates which the city can
10 impose the tax and at a least to local
11 law discretion in setting the rate
12 within those maximum limits and we are
13 currently at the maximum limit.
14 Therefore, state law would be needed
15 to amend that and we cannot do that
16 through charter revision.

17 The other thing that seemed to
18 be suggested was we had a public
19 opinion pole as whether or not the tax
20 should be raised and if it has been
21 made clear through case law and either
22 through interpretations of the state
23 home rule law what publish opinion
24 polls are not permitted to be
25 conducted by charter revision

1 HEARING

2 commissions.

3 MR. ZACCONE: That is true, If
4 I may clarify, what we are asking for
5 the commission to do today is to
6 consider amending the city Charter to
7 add the Chapter 75 to establish these
8 borough community preservation
9 commissions as part and parcel that
10 have the next step will be, if that is
11 approved and it is passed and these
12 commissions exist for the borough
13 presidents to go to the City Council
14 and ask for a home rule message to go
15 to the state legislature and the
16 governor to ask them to pass an
17 amendment to state law provided for
18 these taxes or transfer fees to be
19 imposed.

20 Again, this is modeled after a
21 provision that exists in the five
22 towns on the eastern portion of Long
23 Island or surrounding Paconic Bay
24 where think established a 2 percent
25 transfer fee to preserve the open

1 HEARING

2 space and the wetlands that are there
3 and looking at that we feel that this
4 is something a mechanism that went in
5 the past and it seems to be working
6 very well out there.

7 And we use it as a model. But
8 what we are presenting to the
9 commission today is only the
10 established borough community
11 preservation commissions as part of
12 this.

13 MR. CROWELL: How do they do it
14 out in Paconic? How do they do it in
15 Paconic with the referendum? I think
16 that would help if you can clarify it.

17 MR. ZACCONE: What happens
18 there is five separate towns that
19 surround the Paconic Bay on the
20 eastern shore of Long Island. I
21 believe this action is 1499 AA of the
22 state tax law where the state
23 legislature passed an enabling
24 provision allowing for the position of
25 the 2 percent transfer fee of each of

1 HEARING

2 the five towns that set up a
3 commission provided that the local
4 town members approved it by
5 referendum.

6 MR. CROWELL: What came first
7 state law or the referendum?

8 MR. ZACCONE: The state law and
9 then the referendum.

10 MR. CROWELL: The state law --

11 MR. ZACCONE: The state law
12 required that any town seeking to
13 impose it would have to have a
14 mandatory referendum approved by the
15 taxpayers.

16 MR. CROWELL: Got you.

17 DR. FUCHS: I think
18 Commissioner Raab had a follow up.

19 MS. RAAB: What is the borough
20 president's vision of the lands that
21 after they are required and is there a
22 permanent easements, so they may never
23 be developed if there were expectation
24 on people wanted a park on the land or
25 low income housing, who makes those

1 HEARING

2 decisions and how long does this
3 easement last?

4 MR. ZACCONE: We are not
5 looking to create easements per se we
6 are --

7 MS. RAAB: When the commission
8 is requiring lands and to build upon
9 it what is the constraints on?

10 MR. ZACCONE: The way we
11 envision it these lands would be
12 maintained for the people of Staten
13 Island and for the entire city as open
14 space or parks.

15 MS. RAAB: So it is a permanent
16 conservation easement.

17 MR. ZACCONE: Yes, in affect,
18 but we are not referring to that
19 because we are not taking easement we
20 are taking ownership of the property.

21 MS. RAAB: But that is the
22 difference, if you are the owner and
23 somebody in the politics could change
24 and we could decide if we need low
25 density low income housing, could the

1 HEARING

2 commission consider that proposal?

3 MR. ZACCONE: My suggestion
4 would be obviously leave it up to the
5 Charter review commission, but my
6 suggestion would be that they that
7 leave it, so if it is held by the
8 commission or it is transferred to
9 city parks or some other city agency
10 with some sort of provision; for
11 example, in state law if its the state
12 constitution Forever Wild, something
13 like that could be established or it
14 could be some requirement that
15 establishes the commission to do
16 that. Where you could leave it as
17 totally open space or parks or other
18 public purposes, but again that would
19 be I think for the commission to do on
20 a case-by-case basis and the charter
21 provision would limit or determine
22 what uses they could put forth it.

23 DR. FUCHS: Commissioner
24 Forsythe.

25 DR. FORSYTHE: The Paconic that

1 HEARING

2 has to do with -- I did work in the
3 state government and the Adirondack
4 Park agency is a very complex
5 organization involving zoning and
6 planning and all kinds of other powers
7 and they had a terrible time figuring
8 out what they are going to do, but I
9 don't know if you want to know what
10 you will let yourself in for the long
11 run.

12 MR. ZACCONE: If I could
13 answer, to that they would put a
14 limitation on that would the property
15 could be used for. Certainly a 100
16 years from now when none of us here
17 anymore we don't people saying that
18 the public purpose is building a
19 supermarket on the property.

20 DR. FORSYTHE: I want to
21 address Commissioner Betanzos issue in
22 what I thought was a serious one about
23 whether this divides a community and
24 along what lines, and her initial
25 suggestion was it would divide the

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committee between older people and younger people. I guess what I was worried about it would end up dividing the community between property owners and nonproperty owners. And this would be a proposal that would have city limitations because all the other boroughs could also have that.

I assume that the referendum that you are talking about would be open to all voters not just limited to property owners.

MR. ZACCONE: It would it be open to all voters.

DR. FORSYTHE: Staten Island I believe is the only place in New York where the majority of the residents own property. I think every other borough of New York, property owners are in the minority, and then you are looking at a situation where a referendum may impose taxes on property owners that would be a majority of the voters would be

1 HEARING

2 nonproperty owners. And it could get
3 pretty ugly in some of the boroughs.

4 MR. ZACCONE: Sorry to
5 interrupt, but the point where you
6 proposed that it would be done on a
7 borough by borough basis; in the
8 borough of Staten Island and the
9 citizens and the voters of Staten
10 Island would like to self impose this
11 transfer fee, it would be done; if the
12 voters of Brooklyn decide not to then
13 it wouldn't be done.

14 DR. FORSYTHE: I was worried
15 about that Manhattan.

16 MR. ZACCONE: Okay.

17 DR. FORSYTHE: I was worried
18 that the voters in Brooklyn would
19 decide they didn't want to impose the
20 tax, but the voters of Brooklyn would
21 primarily be nonproperty owners. It
22 is just that this proposal might raise
23 those issues. It is interesting and
24 again it is a very interesting
25 proactive proposal and I don't know

1 HEARING

2 what the mix of residents is in
3 Paconic. I guess that they are even a
4 larger percentage of ownership of
5 residents there in Staten Island just
6 as a guess.

7 MR. ZACCONE: It is a guess.

8 DR. FORSYTHE: I think you
9 understand my point.

10 DR. FUCHS: Any other questions
11 from the commissioners?

12 Well, I would like to thank you
13 for coming forward and the borough
14 president with a very interesting and
15 proactive proposal. I think we
16 certainly want to consider the
17 conservation issues that you bring up
18 in this proposal and how we could move
19 forward that agenda of conservation
20 and there are other conservation
21 proposals that are in some way similar
22 in intent that have already been
23 emerged before the Charter commission
24 and I think that it is clear from the
25 comment of the commissioners that

1 HEARING

2 there is some troubling aspects of
3 this proposal that relates to the
4 question of the jurisdiction of the
5 charter commission and what is the
6 jurisdiction of state law here in
7 terms of really preceding anything
8 that we might consider on the taxing
9 issue and also the issue of community
10 divisions and the equity question of
11 who would bear the burden of this in
12 its current formulation.

13 So I think we would be more
14 than happy to consider the substance
15 of this proposal and I think dealing
16 with issues of preservation and
17 conservation are critical and we will
18 try to think about how to do that
19 in the context of the limits that we
20 have as a charter commission.

21 We will continue reaching out
22 and working with you in the borough
23 president's office on that matter.

24 MR. ZACCONE: Thank you. I
25 would like to thank the commissioners

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for their time and offer the services of the borough president's office and myself in answering any further questions that you may have or any proposal or requests for modifications that you think maybe appropriate and I would be happy to answer them.

Thank you.

DR. FUCHS: I would like to call Anita Lerman to testify, please.

MS. LERMAN: Before I speak on my topic, I can't control myself, I must comment on the prior speaker's excellent presentation. It just occurs to me off the top of my head that probably the Charter commission could designate that a fixed proportion of all city income be set aside for the purchase of those lands, a simplistic solution that I am sure has many flaws.

I am here to talk to you about today's voting technology and how possibly this might be incorporated

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into the city Charter, specifically hoping that our currently voting machines should be maintained and used indefinitely as our voting technology and possibly to include that as an item in the city Charter.

There has been a wide spread belief that these machines are disintegrated but in fact the board of elections has a contract with international voting systems and they are supplied routinely on demands with all the parts if they need to fix these machines. They can be maintained forever. They can even be replaced and I was told this over the phone in person and I have with me a copy of the letter, the written statement from the company that they do have this contract, that they are serving this purpose and that these machines can be maintained forever.

I have some copies of this here. I must point out to this point

1 HEARING

2 that lobbying is only an advocating
3 with me, so here they are and I would
4 give each of you, a copy of this.

5 That is the first part, now the
6 reason there we would want to maintain
7 them and now you know that we can and
8 all the material that you have heard
9 about how they are disintegrated us is
10 absolutely not true; why we would want
11 to keep them, we would want to keep
12 them first as counting devices because
13 they are 100 percent reliable.

14 And secondly because it is
15 virtually impossible to commit any
16 fraud with them. There are ways of
17 committing fraud in elections, but not
18 through these machines. And not only
19 can't you commit fraud with them you
20 certainly cannot prefix an election,
21 using this kind of counting device.

22 However, every other existing
23 counting system in use and under
24 proposal easily lends itself to
25 undetectable total prefixing of

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electrics to say nothing of enormous fraud, the fraud issue is primary, but in addition to that all the electronic systems that are available and that are even conceivable are a poor counting device.

The problem with electronics is that when we are using any kind of software it takes decades until that software is debugged sufficiently so that the job it does is reliable. We always think of computer in terms of banks, what you don't know is that 40 years of debugging of those programs has been going on.

There is a lady named Teresa Hommel who does this professionally and has told me that that what is happening right now. She says I am still called as a consultant to banks when those computers screw up and nobody knows why.

She compiled and I don't have enough copies of this and I guess the

1 HEARING

2 chair or possibly the secretary of
3 what she compiled. It is something
4 that is very near and dear to her
5 because it is her line of work having
6 to do with how these machines brand
7 new and that is what is critical about
8 electronics. They work worse when
9 brand new because the software is
10 brand new. These are, I forget the
11 terminology she used, but basically it
12 means brand new and not yet debugged
13 to any extent whatsoever.

14 This is 84 pages of citations
15 from published literature on the total
16 misoperation, huge over counts, huge
17 under counts, votes disappearing into
18 files and nobody knows why. From at
19 the moment they are in place, they
20 have to call out the servicemen to try
21 to figure how to make it work. Then
22 in the end the number of people voting
23 just doesn't agree with the number of
24 votes counted by huge amounts, huge
25 lines.

1 HEARING

2 Basically this is a highly
3 expensive system that operations by
4 actual demonstration terribly. The
5 gentleman that was here before
6 initiated a conversation dialogue on
7 the subject of money, the systems
8 currently under most consideration are
9 the most expensive and the most
10 fraudable entirely. Because these
11 systems are proprietary which means
12 that nobody could know how these
13 machines work except the company and
14 nobody could fix them or service them
15 except the company and nobody could
16 look at the software except the
17 company that is providing by law, so
18 that means that when it is comes to
19 service contracts the sky is the
20 limit.

21 So you got huge money problems,
22 you have reliability problems right
23 through the ceiling and then you have
24 the fraud problems with this
25 proprietary software you can have

1 HEARING

2 transmission devices within them and
3 some of them have failed to have them,
4 by accident.

5 There was a lady named Rebecca
6 Mercury who is an expert on computer
7 voting systems and I am told that she
8 posed as a housewife walked in and
9 opened up one of these voting machines
10 and Diebold and found their illegal
11 transmitter in the one they said they
12 didn't have; any how that is
13 anecdotal. However, what it means is
14 that any one person in the world could
15 determine the outcome of an election
16 absolutely undetectably and one of the
17 things that you can do with
18 electronics you could put in a program
19 that says when you want to rate
20 yourself and talk about undetectable
21 and that is old technology.

22 Only a very small number of
23 people in the world that know how to
24 get into them it takes hours for those
25 specially trained people to be able to

1 HEARING

2 get into them, so how, the only way to
3 make the vote to defraud the vote is
4 to file down gears, once you open it
5 up you could see the filed down
6 gears. This is what it takes to
7 commit fraud on those machines.

8 After the candidates names are
9 put in then they are in warehouses for
10 a month. They are never unguarded.
11 Five hours with all those people
12 there. It would be very noticeable.
13 So basically we have the most perfect
14 technology for counting votes on the
15 face of the earth and what a wonderful
16 world we would have if only every
17 place in the world was counting votes
18 in this way.

19 You are going to hear how
20 wonderful it is to count paper and to
21 some circumstances in some places it
22 maybe wonderful; however, let's not
23 forget that paper fits neatly into
24 garbage cans and once in a garbage bag
25 undetectable.

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When it comes to the software any college student with knowledge of these things within five minutes can do very interesting things and that is when you could even get them to work reliably.

This is here. I will be giving a copy. I will give you a complete set of the other part and I am hoping that you all will get a chance to look it over. I understand the psychological affect of reading this material is quite intense.

DR. FORSYTHE: I do have a comment and that is I was truthfully comforted in the course of the last five years to note that New York has mechanical voting machines instead of electronic voting machines. I do not necessarily believe that that preference will shine forever in the City of New York, but I do thank you for bringing this issue to our attention.

1 HEARING

2 MS. LERMAN: Thank you, very
3 much.

4 DR. FUCHS: Any other comments
5 for Ms. letter man.

6 MR. FIALA: I would like to
7 thank you for coming before us today
8 and you have a long history on Staten
9 Island with your husband Tom Hamilton
10 in crusading advancements in the
11 electoral process and in opening up
12 the electoral process and I commend
13 you both for that.

14 There is no question that you
15 brought us a wealth of information,
16 valuable information which is worthy
17 of being debated as the debate
18 regarding Halva and the related issues
19 unfold.

20 So what I will do the Mayor has
21 appointed an election modernization
22 task force and we will forward that
23 information, via myself since I am on
24 it, I think.

25 DR. FUCHS: How convenient for

1 HEARING

2 you.

3 MR. FIALA: It think it will be
4 more appropriate and this will be
5 taken up. So just you are aware we
6 will be meeting next Friday and one of
7 the issues will be setting an agenda
8 for public discussion.

9 So I hope to hear from you
10 again in the future, but rest assured
11 that this issue will at least be put
12 on the agenda of that task force that
13 is currently studying elections in a
14 more broad sense.

15 Thank you for your testimony.

16 MS. LERMAN: When you say next
17 Friday, in this room --

18 MR. FIALA: The task force
19 meeting, we will be discussing on
20 having public discussions, so stay
21 tuned, but I want you to know that we
22 will certainly look at the material
23 that you provided.

24 MS. LERMAN: Thank you.

25 DR. FUCHS: Commissioner

1 HEARING

2 Abrams.

3 MR. ABRAMS: Thank you, very
4 much. If I understand the import of
5 your testimony it seems to be
6 absolutist in the sense that you
7 believe that the City should not
8 contemplate in the future using new
9 technology in the voting process
10 because it maybe susceptible to fraud;
11 is that correct? You feel that the
12 technology will never be achieved to
13 be impervious to fraud?

14 MS. LERMAN: Teresa Hommel is
15 the consultant who has been trying to
16 put out as much as of the technical
17 information out there as much as
18 possible and I was in a group that she
19 was training. There was a computer
20 student at Cornell who raised his hand
21 and he said let us not throw out the
22 baby with the bath water.

23 There she is.

24 Let us not throw out the baby
25 with the bath water. He said my

1 HEARING

2 professor told me that right now they
3 are working on computer systems that
4 that are secure and can't be broken
5 into. I think that was the most
6 powerful thing I heard on the subject
7 of your question, that even as we
8 speak our government as they are and
9 our businesses are totally dependant
10 on computers as they are. They are
11 entirely unsecurable and the idea of a
12 securable electronic system is one
13 that exists in the hopes and dreams of
14 Cornell professors.

15 DR. FUCHS: Any other questions
16 from the commissioners?

17 Thank you so much for bringing
18 this testimony. I am glad that our
19 Commissioner Fiala can forward this to
20 the election modernization task
21 force. In fact it is an extremely
22 important issue and I like my
23 colleague here always took great
24 comfort in the electronic machines and
25 have some skeptics about the capacity

1 HEARING

2 of the technology, but maybe I am too
3 forever a dreamer thinking that we
4 could come up with something.

5 We appreciate you bringing this
6 to us and we will make sure that it
7 gets forwarded to the appropriate task
8 force.

9 MS. LERMAN: If you want to ask
10 extremely technical questions and get
11 wonderful understandable answers this
12 lady here is the professional computer
13 consultant who is very committed to
14 this issue and how would you like them
15 to contact you.

16 MS. HOMMEL: They are doing the
17 same thing in New York on April 4th.

18 MS. LERMAN: If anyone wants to
19 make sure that the secretary Fiala has
20 her contact information.

21 DR. FUCHS: Thank you, very
22 much. Is there any new business
23 before the commission?

24 If not can I have a motion to
25 adjourn? Can I have a second?

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HEARING

The New York City Charter
Revision Commission in Staten Island
is adjourned.

Thank you, very much for
attending.

(TIME NOTED: 7:00 p.m.)

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HEARING

C E R T I F I C A T E

STATE OF NEW YORK)
COUNTY OF RICHMOND)

I, CHRISTINE SHEARER, a Stenotype
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That the above is a true and
accurate transcription of my stenographic
notes to the best of my ability.

I further certify that I am not
related to anyone in the hearing, and that I
am in no way interested in the outcome of this
matter.

IN WITNESS HEREOF, I have hereunto
set my hand this ____ day of _____, 2005.

CHRISTINE SHEARER